

This letter discusses agency agreements for filing sales tax returns (See 86 Ill. Adm. Code 130.550). It also discusses tax rates. (This is a GIL.)

January 14, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 14, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please provide me with the necessary taxes to collect in the following case:

STATE Corporation selling food supplements in a multi level marketing mode of sales to Illinois residents

- 1) They sell 'sales Kit' containing printed materials, CD, audio & video cassettes
- 2) They sell food supplements for consumption by purchaser
- 3) They sell food supplements for resale to a purchaser who will not file Forms ST-1

We refer you to the Department's regulation at 86 Ill. Adm. Code 130.550 regarding "Filing of Returns for Retailers by Suppliers Under Certain Circumstances." This regulation sets out the Department's policy governing agency agreements. With an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors. However, if distributors who are affected make written objection to the Department, such distributors may opt out of the agreement and remit their own taxes. The Department utilizes a standard "Agency Agreement" with wholesalers and manufacturers that wish to enter into such arrangements. We have enclosed a copy for your information.

Under an agency agreement, a manufacturer or wholesaler remits tax on its sales to distributors, based upon the suggested retail price of the items sold by its distributors. Distributors participating in this type of arrangement are not required to register with the Department, file returns or remit tax because those obligations are assumed by the manufacturer or wholesaler. Consequently, when wholesalers or manufacturers enter into agency agreements with the Department, they become retailers subject to Retailers' Occupation Tax, and are the entities to which the Department will look for payment of the tax.

We also refer you to 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see at Section 130.310(b)(1), "[a] food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See Section 130.310(c)(1). Under the above stated definitions, dietary supplements could be classified as food or they could be classified as drugs if the products purport on the label to have medicinal qualities.

Tangible personal property that does not meet the definitions of food, drugs, medicines and medical appliances, or is food prepared by the vendor for immediate consumption, is taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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